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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

LIGHTFORCE USA, INC. d/b/a NIGHTFORCE OPTICS and **NIGHTFORCE USA,** a Washington corporation, and **HVRT CORP.,** a Washington corporation, Plaintiffs, vs. **LEUPOLD & STEVENS, INC.,** an Oregon corporation, Defendant.	No. 3:17-cv-01153-AC **CONSENT JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NOS. 6,453,595; 8,707,608; AND 8,966,806**

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Plaintiffs Lightforce USA, Inc. dba Nightforce Optics and Nightforce USA, and HVRT Corp. ("Plaintiffs") and Defendant Leupold & Stevens, Inc. ("Leupold") stipulate and agree to the Court's entry of the following Consent Judgment in resolution of certain of the claims and counterclaims made in the above-captioned action.

This Consent Judgment is entered with respect to the following facts.

1. On July 25, 2017, in the United States District Court for the District of Oregon, Plaintiffs filed a Complaint against Leupold for alleged infringement of, *inter alia*, U.S. Patent No. 6,453,595 ("the '595 patent"), U.S. Patent No. 8,707,608 ("the '608 patent"), U.S. Patent No. 8,966,806 ("the '806 patent"), and U.S. Patent No. 9,335,123 ("the '123 patent") (collectively the "Patents").

2. On October 10, 2017, Plaintiffs filed a First Amended Complaint including infringement contentions in which it identified the asserted claims as claims 1 and 5 of the '595 patent; claims 1-3, 7, 8, 10, 11, 14, 21-23, 24-27, 29, and 31 of the '029 patent; claims 1-3, 7, 8, 10, 11, 14, 21-27, 29, and 31 of the '630 Patent; claims 1-3, 7, 8, 10, 11, 14, 21-27, 29, and 31 of the '608 patent; claims 1-3, 7, 8, 10, 11, 14, 17-27, 29, and 31 of the '806 Patent, and claims 1-3, 7, 8, 10, 12, 13, 15, 17, 19, 21, 22, 24-28, 30, 32, 33, 35, 37, 38, 40, 42, 44, 46, 47, 49-51, 60-62, 66, 67, 69, 71, 72, 74, 76, 78, 80-87, 91, 92, 94, 96, 97 99, 101, 103, and 105-110 of the '123 Patent; and identified the products accused of infringing the asserted claims of the '595 Patent, '608 Patent, and '806 Patent as Ilum. Impact-23 MOA, Ilum. Impact-29 MOA, Ilum. Impact-32 MOA, Ilum. Impact-45 MOA, TS-29 X1, and TS-32 X1 and CMR-W Grid reticles (collectively the "Accused Products"); and the asserted claims of the '123 Patent as Ilum. Impact-23 MOA, Ilum. Impact-29 MOA, Ilum. Impact-32 MOA, Ilum. Impact-45 MOA, TS-29 X1, and TS-32 X1.

3. On October 24, 2017, Leupold filed counterclaims against Plaintiffs seeking declaratory judgments that the Patents are invalid and not infringed.

4. Pursuant to the Court's Order dated January 25, 2018, Plaintiffs narrowed the

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asserted patents and claims to claim 1 of the '595 Patent; claims 1, 3, 27 and 29 of the '608 Patent; claims 1, 3, 27, and 29 of the '806 Patent; and claims 1, 3, 13, 17, 22, 85, 87, 97, and 110 of the '123 Patent (collectively "Asserted Claims).

5. On May 15, 2019, the Court issued its Opinion and Order regarding disputed terms of the Asserted Claims (the "May 2019 *Markman* Ruling"). Among other terms, the Court construed the terms "cross-hair", "intersect", "intersection", and "primary vertical cross-hair."

6. Plaintiffs concede that, under the May 2019 *Markman* Ruling, the Accused Products do not infringe any of the Asserted Claims of the '595 patent, the '608 patent, and the '806 patent, either literally or under the doctrine of equivalents, or under any other theory of infringement. As construed by the Court, the Accused Products fail to satisfy the "cross-hair", "intersection" and "intersect" terms. Plaintiffs and Leupold, therefore, stipulate to entry of this Consent Judgment that the Accused Products do not infringe the Asserted Claims of '595 patent, the '608 patent, and the '806 patent. Subject to Plaintiffs right of appeal, discussed below, this judgment is fully dispositive of all claims and counterclaims relating to the '595 patent, '608 patent, and '806 patent.

7. Notwithstanding the foregoing, Plaintiffs reserve the right to appeal this judgment as reliant upon the underlying May 2019 *Markman* Ruling after a Final Judgment is entered in this case. For the avoidance of doubt, Plaintiffs reserve no right of appeal with respect to the '595, '608 and '806 patents other than a challenge to the correctness of the May 2019 *Markman* Ruling, which challenge may include Plaintiffs' disputed assertion that the Court did not consider ECF-60-1 as part of its *Markman* Ruling.

8. For the avoidance of doubt, the parties further stipulate and agree that no appeal may be taken from this Consent Judgment until after judgment has been entered on all issues relating to the '123 patent, at which time this Consent Judgment shall be merged into an appealable Final Judgment. Defendant further warrants that it will not assert ECF-60-1 as

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prior art against the '123 patent prior to entry of Final Judgment. However, if the Federal Circuit Court of Appeals were to reverse or amend the May 2019 *Markman* Ruling on appeal, Leupold reserves all rights with respect to its counterclaims of invalidity and non-infringement on remand.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Consent Judgment of Non-Infringement of U.S. Patent Nos. 6,453,595; 8,707,608; and 8,966,806 is entered for Leupold and against the Plaintiffs.
2. No appeal shall be taken from this Consent Judgment until after entry of a Final Judgment addressing all issues in the case.
3. Each party shall bear its own costs and attorney's fees.

Dated this 26th day of August, 2019.

JOHN V. ACOSTA
United States Magistrate Judge

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IT IS SO STIPULATED:

DATED: August 21, 2019

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